

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

NO. 7:13-CV-112-F

CARLOS A. ALFORD,

Plaintiff,

vs.

SECRETARY OF NAVY RAY
MABUS, *et al.*,

Defendants.

**MEMORANDUM AND
RECOMMENDATION**

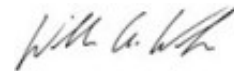
Plaintiff has filed an application to proceed *in forma pauperis*. (DE-2). He has demonstrated appropriate evidence of inability to pay the required court costs. However, the Court must also conduct a review pursuant to 28 U.S.C. § 1915, which requires the Court to dismiss all or any part of an action found to be frivolous or malicious, which fails to state a claim upon which relief can be granted, or which seeks money damages from a defendant immune from such recovery. *See Cochran v. Morris*, 73 F.3d 1310, 1315-16 (4th Cir. 1996). A case is frivolous if it lacks an arguable basis in either law or fact. *See, Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Inter alia, Plaintiff seeks to have his discharge from the Marine Corps “upgraded to Honorable from Other Than Honorable.” (DE-1, pg. 1). Plaintiff has asserted these claims previously. Specifically, on February 21, 2012, this Court denied Plaintiff’s claims without prejudice because he had not exhausted his administrative remedies. *Alford v. Pfeiffer*, 7:11-CV-38-BR, (DE-66). It is unclear from Plaintiff’s Complaint whether he has now exhausted those remedies, and that alone would be a basis for dismissal. Moreover, Plaintiff filed a virtually

identical complaint in another case on January 22, 2013. Alford v. Mabus, et al., 7:13-CV-15-D, (DE-1-1). That litigation is still pending. “Actions that are identical to a pending action are superfluous and thus frivolous.” Richardson v. Inmate Records Supervisor, 2013 WL 1310411, *2 (D.S.C. 2013). “The interests of judicial economy underlying *res judicata*, including the conservation of judicial resources and the prevention of piecemeal litigation, are applicable here.” *Id.* (Citing, Aloe Creme Laboratories, Inc. v. Francine Co., 425 F.2d 1295, 1296 (5th Cir.1970) (“The District Court clearly had the right to take notice of its own files and records and it had no duty to grind the same corn a second time. Once was sufficient.”))).

Accordingly, the undersigned RECOMMENDS that Plaintiff’s motion to proceed *in forma pauperis* be GRANTED, but that his Complaint be dismissed as frivolous.

SO RECOMMENDED in Chambers at Raleigh, North Carolina on Friday, May 31, 2013.



WILLIAM A. WEBB
UNITED STATES MAGISTRATE JUDGE